

Application No.: 09/809,638

Docket No.: 511582003500

REMARKS

Claims 1, 14, and 23 are pending and stand rejected. Careful consideration has been given to the grounds for rejection, and the following remarks and supplemental information are offered in response. Reconsideration is respectfully requested.

Sufficiency of the Rule 131 Declaration

Claims 1, 14, and 23 were rejected as allegedly being anticipated by WO 2002/70539 A2. Applicants submitted a declaration under 37 CFR § 1.131, which was rejected by the Office because it allegedly lacked evidence supporting the assertion that the Applicants invented the claimed subject matter prior to the effective date of the cited reference.

In response, Applicants submit a reproduction of the laboratory notebook of Steven C. Mitchell, noting the sequencing of the claimed cloned. This evidence was inadvertently omitted from the Rule 131 declaration which was filed with our last response. Applicants submit that this evidence is sufficient to establish that the presently claimed invention was in possession of the inventors prior to the filing of both WO 2002/70539 A2 and U.S. patent application, 09/799,451, filed on March 5, 2001, to which the PCT application claims priority. As such, this reference is not available as prior art against the pending claims and the present rejection should be withdrawn.

Double Patenting

Claims 1, 14, and 23 were rejected as being unpatentable over claims 1, 12-17, 19, 21, 26, 51, and 52 of copending Application No. 10/099,460. Applicants have submitted with the present response a terminal disclaimer which is sufficient to overcome the present rejection.

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CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no. 511582003500. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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